IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 21122 of 2007(M)

PETITIONERS:

1. **OOMMEN VARGHESE ALIAS REJI,**
   AGED 45 YEARS, S/O. OOMMEN VARGHESE,
   THUNDATHIL ROSE HOUSE, MOONNALAM, ADOOR P.O.

2. **JOHN KOSHY, AGED 63 YEARS,**
   S/O. LATE KUNJU KOSHY, MADATHILAZHIKATHU HOUSE,
   ERATHU P.O., ADOOR.

3. **SHAJI VARGHESE, AGED 46 YEARS,**
   S/O. LATE M.P. VARGHESE, PUTHENVILA HOUSE,
   ANANDAPALLY P.O., ADOOR.

4. **VARGHESE P.G., AGED 61 YEARS,**
   S/O. LATE GEORGE, GEORGE COTTAGE, KONNANKODU,
   ADOOR P.O.

5. **MUHAMMED YOOSAF, AGED 52 YEARS,**
   S/O. K.ABDUL KHADAR, NIHAL MANZIL,
   KANNANKODU, ADOOR.

6. **CHELLAMMA VASUDEVAN PILLAI,**
   THOMASSERIL VADAKKETHIL, KANNAMCODE, ADOOR P.O.

7. **VARGHESE OOMMEN, AGED 48 YEARS,**
   S/O. LATE OOMMEN SAMUEL, CHARUVILA BERSEBA HOUSE,
   MOONNALUM, ADOOR P.O.

BY ADV. SRI.V.PHILIP MATHEWS.

W.P.(C). NO.21122/2007:

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY, DEPARTMENT OF PWD,
   KERALA GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM.

2. **DISTRICT COLLECTOR, PATHANAMTHITTA.**

3. **R.D.O., ADOOR.**

4. **ASSISTANT EXECUTIVE ENGINEER,**
   PWD (ROADS) SUB DIVISION, ADOOR.

5. **ADOOR MUNICIPALITY,**
   REPRESENTED BY ITS SECRETARY, ADOOR.

6. **VILLAGE OFFICER,**
   ADOOR, PATHANAMTHITTA DISTRICT.

7. **G. THOMAS,**
   CHITTUNDAYIL GEO BHAVAN, KANNAMKODE, ADOOR.

BY SR. GOVT. PLEADER SRI.BENJAMIN PAUL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.21122/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE SALE DEED DTD. 14/07/04 IN FAVOUR OF THE P.1.

EXT.P.2: COPY OF THE LAND TAX RECEIPT DTD. 23/01/2007 IN FAVOUR OF THE P.1.

EXT.P.3: COPY OF THE PROFESSIONAL TAX RECEIPT IN FAVOUR OF THE P.1.

EXT.P.4: COPY OF THE SALE DEED DTD. 13/12/1993 IN THE NAME OF THE P.2.

EXT.P.5: COPY OF THE PROPERTY TAX RECEIPT IN THE NAME OF THE P.2.

EXT.P.6: COPY OF THE SALE DEED DTD. 15/05/2007 IN THE NAME OF THE P.3.

EXT.P.7: COPY OF THE LAND TAX RECEIPT DTD. 06/06/2007 IN THE NAME OF THE P.3.

EXT.P.8: COPY OF THE PROFESSIONAL TAX RECEIPT DTD. 26/02/2007 IN FAVOUR OF THE P.3.

EXT.P.9: COPY OF THE SETTLEMENT DEED DTD. 13/04/2000 IN FAVOUR OF THE P.4.

EXT.P.10: COPY OF THE PROFESSION TAX RECEIPT IN FAVOUR OF THE P.4.

EXT.P.11: COPY OF THE PROPERTY TAX RECEIPT IN FAVOUR OF THE P.4.

EXT.P.12: COPY OF THE JUDGMENT DTD. 30/03/1989 IN A.S. 77/1987.

EXT.P.13: COPY OF THE SALE DEED DTD. 30/11/06 IN FAVOUR OF P.5.

EXT.P.14: COPY OF THE LAND TAX DTD. 08/02/2007 IN FAVOUR OF P.5.

EXT.P.15: COPY OF THE PROPERTY TAX RECEIPT IN FAVOUR OF THE P.6.

EXT.P.16: COPY OF THE JUDGMENT IN A.S. NO. 21/1973 ON THE FILE OF SUB COURT, PATHANAMTHITTA.

EXT.P.17: COPY OF THE JUDGMENT IN SA. NO. 423/1974.

EXT.P.18: COPY OF THE SALE DEED DTD. 03/11/2000 IN FAVOUR OF P.7.

EXT.P.19: COPY OF THE LAND TAX RECEIPT DTD. 03/03/2003 IN FAVOUR OF P.7.

EXT.P.20: COPY OF THE PROPERTY TAX RECEIPT DTD. 28/02/07 IN FAVOUR OF P.7.

EXT.P.21: COPY OF THE LICENSE FEE RECEIPT DTD. 01/03/2007 IN FAVOUR OF THE P.7.

W.P.(C). NO.21122/2007:

EXT.P.22: COPY OF THE REPRESENTATION FILED BEFORE THE HON'BLE CHIEF MINISTER BY PETITIONER.

EXT.P.23: COPY OF THE LETTER FROM THE OFFICE OF HON'BLE CHIEF MINISTER.

EXT.P.24: COPY OF THE REPRESENTATION SUBMITTED BY P.1. TO R.2.

EXT.P.25: COPY OF THE REPRESENTATION SUBMITTED BY P.2. TO R.2.

EXT.P.26: COPY OF THE REPRESENTATION SUBMITTED BY P.3. TO R.2.

EXT.P.27: COPY OF THE REPRSENTATION SUBMITTED BY P.5. TO R.2.

EXT.P.28: COPY OF THE REPRESENTATION SUBMITTED BY P.7 TO R.2.

EXT.P.29: COPY OF THE REVISION PETITION DTD. 03/07/2007 FILED BY P.4 TO R.2.

EXT.P.30: COPY OF THE NOTICE ISSUED BY R.4. TO P.1.

EXT.P.31: COPY OF THE NOTICE ISSUED BY R.4. TO P.3.

EXT.P.32: COPY OF THE NOTICE ISSUED BY R.4. TO P.5.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

S. SIRI JAGAN, J.

WP(C) NO. 21122 OF 2007 - M

Dated this the 16th day of July, 2007

J U D G M E N T

The petitioners challenge Exts.P30 to 32 which are notices issued under the Kerala Land Conservancy Act and Rules directing the petitioners to vacate the properties mentioned therein within 72 hours. The main contention of the petitioners is that the properties in question absolutely belong to the petitioners and they have not encroached into any Government land. There is a further contention that before issuing the impugned notices, the petitioners have not been afforded an opportunity of being heard.

2. I have heard the learned Government Pleader also. The Government Pleader could not satisfy me that Exts.P30 to P32 notices were preceded by a notice or a hearing. Exts.P30 to P32 notices do not also contain any reason as to why emergency provisions under the Kerala Land Conservancy Act should be invoked. In the above circumstances, I am satisfied that Exts.P30 to P32 have

been passed in violation of the principles of natural justice and the provisions of the Kerala Land Conservancy Act and Rules. However, if they are treated as show cause notices, the same need not be quashed. The learned Government Pleader submits that it would be more appropriate that the Tahsildar considers the matter than the fourth respondent who has issued Exts.P30 to P32.

3. In the above circumstances, I dispose of this writ petition with the following directions:-

The second respondent shall forward Exts.P30 to P32 to the concerned Tahsildar forthwith. The petitioners shall file their objections to Exts.P30 to P32 within two weeks from today. Thereafter, the Tahsildar concerned shall afford an opportunity of being heard to the petitioners which shall include opportunity to adduce evidence also. The Tahsildar shall thereupon pass a speaking order dealing with the contentions of the petitioners based on the evidences to be adduced by them. Until orders thus passed are communicated to the

petitioners, they shall not be evicted from the properties in question. The concerned Tahsildar shall issue notices to other petitioners who have not been issued with notices similar to Exts.P30 to P32 and the same procedure shall be followed by the Tahsildar in respect of them also.

sd/-
S. SIRI JAGAN,
Judge

Mbs/

-True Copy-

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007